

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 924 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****AND****HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
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UNITED INDIA INSURANCE CO LTD. - Appellant(s)**Versus****MAYURIBEN N SHAH & 6 - Defendant(s)**

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Appearance :MR RAJNI H MEHTA for Appellant(s) : 1,
MR NILESH A PANDYA for Defendant(s) : 1 - 5.
NOTICE UNSERVED for Defendant(s) : 6,
NOTICE SERVED for Defendant(s) : 7,
=====**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH****and****HONOURABLE MR.JUSTICE AKIL KURESHI**

Date : 09/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Heard learned advocate Shri Rajni H Mehta for the appellant – Insurance Company and Mr Nilesh A Pandya for the original claimants.

2. This appeal arises out of a judgment and award dated 29.9.2001 passed by the Motor Accident Claims Tribunal (Aux.), Bharuch in Motor Accident Claim Petition No. 887 of 1991.

3. On 14.5.1991, when one Shri Nayanbhai Shah was driving his ambassador car and was going to Baroda with his family, his car met with an accident at village Palej with a truck. In the resultant injuries that Shri Nayanbhai received, he succumbed to the same. His widow, two minor children and aged parents filed the above mentioned claim petition seeking compensation of Rs.25,00,000/- from the driver, owner and the Insurance Company of the truck.

4. Considering the evidence on record, the Tribunal came to the conclusion that the accident occurred due to sole negligence of the driver of the truck.

5. With respect to the quantum of compensation, the Tribunal came to the conclusion that the deceased owned large area of agricultural lands and was receiving substantial income from cultivating such land. The Tribunal also found that the deceased was a partner in a business firm receiving 45% share of the income. On the basis of evidence of record, the Tribunal came to the conclusion that the deceased was earning Rs.7,200/- per month from business income. Considering the over all evidence, the Tribunal found that the dependency benefits for the family could be worked out at Rs.1,10,000/- per annum. Considering the age of the deceased being 35 years on the date of the accident, the Tribunal adopted a multiplier of 17 and worked out the dependency benefits at Rs.18,70,000/-. To the said sum, the Tribunal added a sum of Rs.20,000/- under the head of loss of consortium and Rs.3,000/- under the head of funeral expenses. Eventually, the Tribunal drew an award of Rs.18,93,000/- by disposing of the said claim petition.

6. The appellant, Insurance Company of the truck involved in the accident, has, therefore, preferred the present appeal challenging the award passed by the Claims Tribunal.

7. Having heard the learned advocates for the parties, we find that so far as the question of negligence of the truck driver is concerned in causing the accident, the Tribunal has rightly come to the conclusion that the accident was as a result of sole negligence of the driver of the truck. In addition to oral evidence of the eye witness Mayuriben, widow of the

deceased, panchnama of the scene of the accident was also produced on record. On the basis of the deposition of claimant No.1, who herself was an eye witness, and on the basis of the contents of the panchnama, the Tribunal found that the truck had travelled on the wrong side and had hit the car which was being driven on the correct side of the road. In our view, therefore, the Tribunal committed no error in attributing 100% negligence to the driver of the truck.

8. With respect to the question of quantum of compensation, at the outset, it may be noted that the computation of dependency benefits worked out by the Tribunal is just and proper and borne out from the available material on record. As noticed earlier, there was evidence on record to suggest that the deceased owned large chunk of agricultural lands and that he was also a partner in a business firm and was receiving 45% share from the income thereof. The Tribunal has given detailed reasons to come to the conclusion that the dependency benefits for the family can be worked out at Rs.1,10,000/- p.a.. We, therefore, see no reason to interfere with this conclusion. The learned advocate for the appellant was unable to dislodge the said finding of the Tribunal. He, however, submitted that considering the age of the deceased, the Tribunal erred in adopting the multiplier of 17. He submitted that a lesser multiplier should have been adopted. We accept the submission of the learned advocate for the appellant in this regard. We find that considering the age of the deceased and other facts and circumstances, the Tribunal ought not to have adopted the multiplier of 17. Learned advocate Shri Pandya for the claimants, under

instructions, agreed that the multiplier may be reduced to 15.

9. Considering the above aspects of the matter, we find that the award made by the Tribunal requires to be modified by substituting the multiplier 15 instead of 17 adopted by the Tribunal. In the result, the claimants should receive a sum of Rs.16,50,000/- towards dependency benefits (i.e. Rs.1,10,000 x 15). Direction for payment of Rs.20,000/- towards conventional heads and Rs.3,000/- for funeral expenses remain unchanged. Direction for payment of interest at the rate of 9% per annum as provided by the Tribunal is also not altered.

10. In the result, the claimants shall receive a sum of Rs.16,73,000/- instead of Rs.18,93,000/- as awarded by the Claims Tribunal. Award stands modified accordingly. Direction for payment of interest remains unchanged.

11. With these modifications, the appeal is partially allowed and disposed of.

12. In view of the modification of the award and allowing the appeal as mentioned above, the appellant – Insurance Company will be entitled to receive differential amount of Rs.2,20,000/- together with proportionate costs and interest deposited by the appellant – Insurance Company before the Claims Tribunal. It is clarified that the amount being so refunded shall be received by the appellant with accrued interest

thereon from the investments made by the Claims Tribunal. The Tribunal may refund the amount to the appellant within four weeks from the date of receipt of the order.

The claimants are permitted Direct Service of this order.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-